



City of Seattle

Department of Planning and Development

D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3013690
Applicant Name: Alan Foltz
Address of Approval: 3229 Fairview Avenue East

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to install grated decking and a 68 ft. by 6 ft. float at existing private club moorage (Tyee Yacht Club).

The following approvals are required:

Shoreline Substantial Development Permit – to install grated decking and a float accessory to an existing yacht club in the Urban Stable (US) Shoreline Environment – (SMC 23.60.600).

SEPA - Environmental Determination - (SMC 25.05).

SEPA DETERMINATION: ☐ Exempt ☒ DNS ☐ MDNS ☐ EIS

☐ DNS with conditions

☐ DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND DATA

Existing Conditions

The subject site is located on the north end of Lake Union in a Commercial (C2-40') zone and Urban Stable (US) shoreline environment. The site is developed with an existing yacht club which includes accessory moorage for small boats. The existing use is to remain.

Zoning and Uses in the Vicinity

The proposal site is located within a larger area which is zoned C2-40' with a US Shoreline Designation, which runs along Fairview Ave. E and is bracketed by the University Bridge to the north and E. Shelby St. to the south. Uses within the zone and vicinity include marinas, floating home moorages and small scale residential and commercial uses.

Proposal

The application is to permit a 6 ft. wide by 68 ft. long (408 sq. ft.) float accessory to the Tyee Yacht Club, for the purpose of allowing small craft moorage. The float was acquired and installed by the club in May 2011, and abuts the existing club facility on the waterward (west) side parallel to the shoreline. The existing club facility is constructed overwater, so although the float abuts the facility it is located approximately 48 feet waterward of the shoreline.

To mitigate impacts associated with the 408 sq. ft. increase in overwater coverage, the applicant is proposing to install grating on the surface of the float (which is currently solid) to increase light transmission. As additional mitigation, the applicant is also proposing to replace 360 sq. ft. of existing solid decking that is part of an existing onsite pier for a total of 768 sq. ft. of newly grated decking.

Public Comment

Public notice of the proposal was issued on July 5, 2012. DPD received one public comment from the Muckleshoot Indian Tribe Fisheries Division stating that they had no questions or comments.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Substantial Development Permit Required

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: A substantial development permit shall be issued only when the development proposed is consistent with:

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC.*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58 RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against effects to public health, the land use and its vegetation and wild life, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline shall be designed and conducted in a manner to minimize, insofar as possible, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. THE REGULATIONS OF CHAPTER 23.60

The regulations of SMC Section 23.60.064 require that the proposed use(s): 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) are permitted in the shoreline environment and the underlying zoning district and 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be required.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district.

The policies support and encourage the protection and enhancement of natural areas on waterfront lots. Land Use element policy LUG48 requires, "Preserve, protect and restore areas such as those necessary for the support of wild and aquatic life or those identified as having geological or biological significance."

The site is also located within an Urban Stable shoreline environment. This designation is listed in the Seattle Municipal Code and the area is referenced in the Comprehensive Plan. The designation is intended (in part) to provide opportunities for people to enjoy the shorelines by encouraging water-dependent recreational uses. (SMC 23.60.220.B.7). Therefore, the proposed project, as conditioned, would conform to the policies of the comprehensive plan and would be consistent with the purpose of the US designation.

Development Standards

The proposal to install a 408 sq. ft. float with grated decking and replace an additional 360 sq. ft. of an existing solid pier with grated decking, accessory to an existing yacht club. The yacht club and accessory floats and piers are permitted outright in SMC 23.60.600 governing the US shoreline environment. The proposed action is therefore subject to:

1. *General development standards for all shoreline environments (SMC 23.60.152);*
2. *Development standards for uses in the US environment (SSMP 23.60.630);*

1. General Development Standards for all Shoreline Environments (SSMP 23.60.152)

There are 18 (23.60.152 A – R) general development standards that apply to all development and uses in all shoreline environments. They require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with Best Management Practices for the specific use or activity. These measures are required to prevent degradation of land and water. These general development standards state, in part, that all shoreline development and uses must: A) protect the quality and quantity of surface and ground water adjacent to the site, D) not release oil, chemicals or other hazardous materials onto or into the water; E) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected; H) All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes; I) All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion; J) be located, designed, constructed, and managed in a manner that minimizes adverse impact to surrounding land and water uses and is compatible with the affected area; and L) be located, constructed, and operated so as not to be a hazard to public health and safety.

As discussed above, the applicant is proposing to install grating on the surface of the float (which is currently solid) to increase light transmission. As additional mitigation, the applicant is also proposing to replace 360 sq. ft. of existing solid decking that is part of an existing onsite pier for a total of 768 sq. ft. of newly grated decking. This 768 sq. ft. of grated decking will be required as a condition of approval of this project.

Construction material such as wood used in the aquatic environment poses a risk of introducing toxins into the environment through the leaching of chemicals used to preserve the material.

Common chemicals used to preserve wood are copper, zinc, and arsenic. In high levels copper can negatively impact aquatic organisms. Additionally, an inherent risk that exists when construction occurs over the water is the potential for debris and other deleterious material to enter the aquatic environment. Therefore to ensure conformance with these general development standards, if treated wood is used in structural elements of the proposed float, it shall meet or exceed the Western Wood Preservers Standards for use of treated wood in the aquatic environment and Best Management Practices shall be required to prevent debris and other deleterious material from entering the water, as conditioned below.

The proposed work has been determined to be consistent with the general standards for development within the shoreline area. General development standards (SMC 23.60.152) state that Best Management Practices shall be followed for any development in the shoreline environment. These measures are required to prevent contamination of land or water. The Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality.

As conditions of approval, the project shall include Best Management Practices:

1. All deleterious material entering the water during the proposed work this material shall be removed immediately and disposed of appropriately. Any sinking debris entering the water shall be entered in a log and retrieved by a diver after construction.
2. An emergency containment plan is required for all toxic material kept on site, including on-site containment equipment and trained personnel.
3. If treated wood is proposed, the wood shall be professionally treated and completely cured using the Best Management Practices developed by the Western Wood Preservers Institute (<http://www.wwpinstitute.org/>) before this wood is used for this project.
4. The owner(s), builder(s), or responsible party(s) shall follow the BMPs developed to prevent debris and other deleterious material from entering the water during demolition and construction.
 - a. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.
 - b. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.
5. Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water. This equipment shall be checked daily for evidence of leaks, if evidence of a leak is found, the leak shall be contained and further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

6. Standard Best Management Practices (BMPs) (such as using secondary receptacle containers when handling toxic material so that any spilled material is contained in the second receptacle rather than entering the water and using toxic material so that none of this material enters the water) shall be used to ensure that no petroleum products, other toxic substances, including household chemicals, herbicides pesticides, chemical fertilizers, miscellaneous debris and/or other deleterious materials are allowed to enter or leach into the water.
2. Development Standards for US Shoreline Environments (SSMP 23.60.630-642)

The development standards set forth in the Urban Stable Shoreline Environment relate to height, size limits, lot coverage, view corridors and public access. All of the applicable development standards are met.

C. THE PROVISIONS OF CHAPTER 173-27 WAC

Chapter 173-27 of the WAC sets forth permit requirements for development in shoreline environments and gives the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and the RCW 90.58 incorporates the policies of the WAC by reference. These policies have been addressed in the foregoing analysis and have fulfilled the intent of WAC 173-27.

Summary

In conclusion, no additional adverse impacts to the lakebed or water quality are expected, subject to the conditions regarding Best Management Practices for construction and restrictions on treated wood products, and the use of grated decking, as listed below. The proposed work at this site will be consistent with the provisions set forth by 90.58 RCW, 173-27 WAC, and Chapter 23.60 SMC also known as the Seattle Shoreline Master Program (SSMP), subject to the conditions listed at the end of this report.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

ANALYSIS – SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated June 28, 2012. The information in the checklist and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SSMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states in part: *"where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,"* subject to some limitations. Under such limitations/circumstances (SSMC 25.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-term Impacts

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Street Use Ordinance requires watering streets to suppress dust, on-site washing of truck tires, removal of debris, and regulates obstruction of the pedestrian right-of-way. Puget Sound Air Pollution Control Agency regulations require control of fugitive dust to protect air quality. The Building Code provides for construction measures in general. Finally, the Noise Ordinance regulates the time and amount of construction noise that is permitted in the city. Compliance with these applicable codes and ordinances will reduce or eliminate most short-term impacts to the environment.

Construction Impacts

Construction activities include construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials. These activities themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from this project and do not warrant mitigation under SEPA.

Historic and Cultural Preservation

The City mapping system indicates that the subject property is located within the Meander Line Buffer, which follows the original shorelines of Seattle. Disturbance of the lake bed is not expected during construction. Therefore, any impacts to unknown archaeological resources are not expected to be significantly adverse and do not warrant mitigation under SEPA.

Water Quality Impacts

Disturbance of the lakebed sediments is not expected. There is the potential for construction debris to enter the water during construction, so care will have to be taken to prevent this from occurring. As discussed above, the project will be required to include Best Management

Practices (BMPs) to be employed during construction of the proposed addition. No additional mitigation under SEPA is required.

Long-term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal including water quality in Lake Union, and habitat for plants and animals.

Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts, including the Land Use Code and the Shoreline Master Program. Compliance with these applicable codes and ordinances is adequate to achieve sufficient mitigation of most long term impacts. As discussed above, the project will be required to include the 768 sq. ft. of grated decking for the life of the project, and no further conditioning is warranted by SEPA policies.

Summary

The Department of Planning and Development has reviewed the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the file; and any comments which may have been received regarding this proposed action have been considered.

As indicated in the checklist and this analysis, this action will result in probable adverse impacts to the environment. However, due to their temporary nature and limited effects as conditioned (under the Shoreline Substantial Development permit), the impacts are not expected to be significant.

DECISION – SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(C).
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

During Construction

1. All deleterious material entering the water during the proposed work this material shall be removed immediately and disposed of appropriately. Any sinking debris entering the water shall be entered in a log and retrieved by a diver after construction.
2. An emergency containment plan is required for all toxic material kept on site, including on-site containment equipment and trained personnel.
3. If treated wood is proposed, the wood shall be professionally treated and completely cured using the Best Management Practices developed by the Western Wood Preservers Institute (<http://www.wwpinstitute.org/>) before this wood is used for this project.
4. The owner(s), builder(s), or responsible party(s) shall follow the BMPs developed to prevent debris and other deleterious material from entering the water during demolition and construction.
 - a. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.
 - b. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.
5. Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water. This equipment shall be checked daily for evidence of leaks, if evidence of a leak is found, the leak shall be contained and further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
6. Standard Best Management Practices (BMPs) (such as using secondary receptacle containers when handling toxic material so that any spilled material is contained in the second receptacle rather than entering the water and using toxic material so that none of this material enters the water) shall be used to ensure that no petroleum products, other toxic substances, including household chemicals, herbicides pesticides, chemical fertilizers, miscellaneous debris and/or other deleterious materials are allowed to enter or leach into the water.

7. The owner and/or responsible parties are required to notify contractors and subcontractors of these requirements.
8. Work waterward of Ordinary High Water Mark shall be in compliance with work windows established by Washington Department of Fish and Wildlife and US Army Corps of Engineers.
9. Care shall be taken by the owner(s), builder(s), or responsible party(s) to prevent toxic materials, petrochemicals and other pollutants from entering surface water during the proposed work. Spill prevention and response plan and material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.

For the Life of the Project

10. Best Management Practices shall be followed.
11. No pesticides, insecticides, fertilizers or other chemicals shall be used at this site.
12. If treated wood is proposed for other structures, this wood shall be professionally treated and completely cured using the best management practices developed by the Western Wood Preservers Institute (<http://www.wwpinstitute.org/>) before this wood is used for this project.
13. The 768 sq. ft. of grated decking shown on the plans will be installed and maintained for the life of the project.

CONDITIONS - SEPA

None.

Signature: _____ (signature on file) Date: November 15, 2012
Molly Hurley, Senior Land Use Planner
Department of Planning and Development

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